

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : ANDERSON, D.M. et al.
Serial No. : 10/788,413
Filing Date : March 1, 2004
For : TREATMENT USING DANTROLENE
Examiner : WANG, Shengjun
Art Unit : 1617

**APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705(b)**

Mail Stop: Patent Ext.
Commissioner for Patents
Washington, DC 20231

February 19, 2010

1. This is an Application for Patent Term Adjustment for the above-referenced application pursuant to 37 C.F.R. §1.705(b).
2. The required fee set forth in 37 C.F.R. §§ 1.705(b)(1) and 1.18(e) of Two Hundred Dollars (\$200.00) is concurrently paid by credit card herewith.
3. A Notice of Allowance and Fees Due was mailed December 2, 2009 in the referenced application and was accompanied by a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) of the same date (“the December 2, 2009 Determination”). The December 2, 2009 Determination indicated a Patent Term Adjustment of 545 days. A copy of the December 2, 2009 Determination is attached hereto as Exhibit A.
4. The Issue Fee has not yet been paid in the referenced application.
5. Applicant hereby requests recalculation of the patent term adjustment under 35 U.S.C. §154(b) indicated in the December 2, 2009 Determination on the basis that this original Determination was based on the USPTO’s pre-*Wyeth* (*Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010; “*Wyeth*”)) interpretation of 35 U.S.C. §154(b)(2)(A).

6. Statement of Facts Involved Pursuant to 37 C.F.R. §1.705(2):

Subsections (i.) through (iv.) below are presented in satisfaction of the requirements set forth in the similarly numbered subsections of 37 C.F.R. §1.705(2).

(i.) The correct Patent Term Adjustment is 1,095 days. The basis of the correction is that the original December 2, 2009 Determination was based on the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. §154(b)(2)(A). Specifically, the original Determination did not add the accrued "A" period delays and "B" period delay and did not consider the overlap of the "A" and "B" periods, in the manners mandated by *Wyeth*.

(ii.) The following table lists the pertinent periods in the PTA recalculation. The pertinent periods are also graphically presented in Exhibit B hereto, which is a marked-up copy of the Transaction History of the referenced application (as downloaded from PAIR at USPTO.gov on January 8, 2010).

Period	Delay/Overlap	Source	Days
1.	A-type USPTO delay: 37 C.F.R. §702(a)(1) 14 mo. mark (05/01/2005) to 1 st Action (06/11/2007)	USPTO	771
2.	B-type USPTO delay: 37 C.F.R. §702(b)(1) 3 yr. mark (03/01/2007) to RCE filing (12/12/2008)	USPTO	652
3.	Overlap in days for A/B periods 1 and 2 (03/01/2007 to 06/11/2007)	USPTO (A/B Overlap)	(102)
4.	Applicant delay: 37 C.F.R. §704(b) 86-day extension in responding to 09/25/2007 non-final rejection.	Applicants	(86)
5.	Applicant delay: 37 C.F.R. §704(b) 91-day extension in responding to 06/12/2008 final rejection.	Applicants	(91)
6.	Applicant delay: 37 C.F.R. §704(b) 54-day extension in responding to 03/03/2009 non-final rejection.	Applicants	(54)
7.	A-type USPTO delay: 37 C.F.R. §702(a)(2) Issuance of Notice of Allowance at 5 days over four mos. after Applicant's 07/27/2009 response.	USPTO	5
Total PTA			1095

- (iii.) The instant application is not subject to any terminal disclaimer.
- (iv.) As shown in the table above, indicated periods 4-6 represent reductions in the Patent Term Adjustment arising from Applicant delay, under 37 C.F.R. §704(b).

7. In view of the foregoing, Applicants hereby petition for a recalculation of the Patent Term Adjustment to which the patent issuing from the instant application is entitled and issuance of a new determination of PTA in accordance therewith.
8. It is believed that no fees other than those paid concurrently are due in connection with the filing of this paper. However, should it be deemed that any other fee is due in connection with this paper, authorization is hereby given to charge such fee to Deposit Account No. 02-2275.

Respectfully submitted,

LUCAS & MERCANTI, LLP

Dated: February 19, 2010

By: /Michael N. Mercanti/ Reg. No. 33,966

CUSTOMER NO. 20311

Michael N. Mercanti
Reg. No. 33,966

Attachments

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,413	03/01/2004	David M. Anderson	820.1020	4972
20311	7590	12/02/2009	EXAMINER	
LUCAS & MERCANTI, LLP 475 PARK AVENUE SOUTH 15TH FLOOR NEW YORK, NY 10016				WANG, SHENGJUN
ART UNIT		PAPER NUMBER		
1627				DATE MAILED: 12/02/2009

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 545 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 545 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

EXHIBIT B

10/788,413 TREATMENT USING DANTROLENE

01-08-
2010:14:40:36**Transaction History**

Date	Transaction Description
12-28-2009	Pubs Case Remand to TC
01-04-2010	Email Notification
01-04-2010	Mail Miscellaneous Communication to Applicant
12-29-2009	Miscellaneous Communication to Applicant - No Action Count
11-24-2009	Information Disclosure Statement considered
12-02-2009	Electronic Review
12-02-2009	Email Notification
12-02-2009	Email Notification
12-02-2009	Mail Examiner's Amendment
12-02-2009	Mail Notice of Allowance
11-24-2009	Information Disclosure Statement (IDS) Filed
11-24-2009	Document Verification
11-24-2009	Notice of Allowance Data Verification Completed
11-24-2009	Case Docketed to Examiner in GAU
11-23-2009	Examiner's Amendment Communication
07-27-2009	Information Disclosure Statement considered
10-06-2009	Case Docketed to Examiner in GAU
09-18-2009	Date Forwarded to Examiner
07-27-2009	Response after Non-Final Action
07-27-2009	Request for Extension of Time - Granted
07-27-2009	Information Disclosure Statement (IDS) Filed
07-27-2009	Information Disclosure Statement (IDS) Filed
12-22-2008	Electronic Information Disclosure Statement
04-30-2009	Mail Examiner Interview Summary (PTOL - 413)
04-20-2009	Examiner Interview Summary Record (PTOL - 413)
03-03-2009	Mail Non-Final Rejection ✓
03-02-2009	Non-Final Réjection
02-19-2009	Examiner Interview Summary Record (PTOL - 413)
12-22-2008	Information Disclosure Statement considered
12-12-2008	Information Disclosure Statement considered
12-12-2008	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received
12-12-2008	Electronic Information Disclosure Statement
12-31-2008	Date Forwarded to Examiner
12-31-2008	Date Forwarded to Examiner
12-12-2008	Request for Continued Examination (RCE)
12-31-2008	Disposal for a RCE / CPA / R129
12-12-2008	Request for Extension of Time - Granted
12-22-2008	Information Disclosure Statement (IDS) Filed
12-23-2008	Change in Power of Attorney (May Include Associate POA)
12-18-2008	Correspondence Address Change
12-12-2008	Information Disclosure Statement (IDS) Filed
12-12-2008	Workflow - Request for RCE - Begin

<p>-91 ↑** 9-12-2008</p> <p>06-12-2008 Mail Final Rejection (PTOL - 326) ✓</p> <p>06-11-2008 Final Rejection</p> <p>04-16-2008 Date Forwarded to Examiner</p> <p>03-20-2008 Response after Non-Final Action</p> <p>03-20-2008 Request for Extension of Time - Granted</p> <p>03-20-2008 Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received</p> <p>09-25-2007 Mail Non-Final Rejection ✓</p> <p>09-17-2007 Non-Final Rejection</p> <p>06-28-2006 Information Disclosure Statement considered</p> <p>10-30-2006 Information Disclosure Statement considered</p> <p>07-10-2007 Date Forwarded to Examiner</p> <p>07-09-2007 Response to Election / Restriction Filed ✓</p> <p>06-11-2007 Mail Restriction Requirement</p> <p>06-08-2007 Requirement for Restriction / Election</p> <p>03-1-2007 Preliminary Amendment</p> <p>12-31-2006</p> <p>10-30-2006 Information Disclosure Statement (IDS) Filed</p> <p>10-30-2006 Information Disclosure Statement (IDS) Filed</p> <p>06-28-2006 Information Disclosure Statement (IDS) Filed</p> <p>06-28-2006 Information Disclosure Statement (IDS) Filed</p> <p>01-31-2006 Preliminary Amendment</p> <p>10-22-2004 IFW TSS Processing by Tech Center Complete</p> <p>10-22-2004 Case Docketed to Examiner in GAU</p> <p>07-22-2004 Application Return from OIPE</p> <p>07-22-2004 Application Return TO OIPE</p> <p>07-21-2004 Application Dispatched from OIPE</p> <p>07-22-2004 Application Is Now Complete</p> <p>06-15-2004 Payment of additional filing fee/Prexam</p> <p>06-15-2004 A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic</p> <p>05-19-2004 Notice Mailed--Application Incomplete--Filing Date Assigned</p> <p>03-31-2004 Cleared by OIPE CSR</p> <p>03-18-2004 IFW Scan & PACR Auto Security Review</p> <p>03-01-2004 Initial Exam Team nn</p>	<p>** Applicants' 91-day Delay in responding to 06-12-08 Final Rej. 37 CFR 1.704(b)</p> <p>* Applicants' 86-day Delay in responding to 09-25-07 Final Rej. 37 CFR 1.704(b)</p> <p>"B" 3-yr. mark to filing RCE 37 CFR 1.702(b) (1) = 652 days</p> <p>A 71</p> <p>102 overlap A + B</p> <p>"A" 14 mo. to 1st Action 37 CFR 1.702(a) (1) = 771 days</p>
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Filing date: 3-1-2004

14 month mark: 5-1-2005

1st OA : 6-11-2007

3 yr mark: 3-1-2007

RCE filed: 12-12-2008

Overlap A+B: 102 days

Appl delay

PTO delay

(-91)

(-86)

(-94)

(-5)

652 B delay

1423 - 102 - [1321 days]

231

5

$$(1321 + 5) - 231 = 1095 \text{ days}$$